

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

FILED

2014 SEP -8 P 3:57

MAXIENT, LLC, a Virginia limited liability
company,

Plaintiff,

v.

SYMPPLICITY CORPORATION, a
Delaware corporation, ARIEL MANUEL
FRIEDLER, an individual, ALOK KUMAR
DHIR, an individual, and MATTHEW
KELLEY, an individual,

Defendants.

Civil Action No. 1:14 CV 1184
LMB/IDD

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

**NOTICE OF REMOVAL OF DEFENDANTS SYMPPLICITY CORPORATION,
ARIEL MANUEL FRIEDLER, ALOK KUMAR DHIR, AND MATTHEW KELLEY**

PLEASE TAKE NOTICE THAT Defendants Symplicity Corporation, Ariel Manuel Friedler, Alok Kumar Dhir, and Matthew Kelley (collectively, "Defendants"), pursuant to 28 U.S.C. §§ 1441 and 1446, hereby file this Notice of Removal on the following grounds and for the following reasons:

1. On August 12, 2014, Plaintiff Maxient, LLC ("Plaintiff") filed a Complaint in the Circuit Court for the County of Arlington styled *Maxient, LLC v. Symplicity Corporation, Ariel Manuel Friedler, Alok Kumar Dhir, and Matthew Kelley*, Civil Action No. 14-1822 (the "State Court Complaint").

2. Defendants were served with the State Court Complaint on or after August 18, 2014. This notice is therefore timely pursuant to 28 U.S.C. § 1446(b). Pursuant to 28 U.S.C. §

1446(a), true and correct copies of all process, pleadings, and orders served upon Defendants are attached to this Notice as Exhibit A.

3. The Circuit Court for the County of Arlington is located within the Eastern District of Virginia. 28 U.S.C. § 127(a). This Notice of Removal is therefore properly filed in this Court pursuant to 28 U.S.C. § 1441(a).

4. The State Court Complaint alleges four counts: Misappropriation of Trade Secrets under Virginia Code § 59.1-336, et seq. (Count One); Computer Fraud under Virginia Code § 18.2-152.3 (Count Two); Computer Trespass under Virginia Code § 18.2-152.4 (Count Three); and Encryption Used in Criminal Activity under Virginia Code § 18.2-152.15 (Count Four). The State Court Complaint requests, among other relief, \$5,000,000 in compensatory damages and \$1,400,000 in punitive damages.

5. Defendants deny Plaintiff's allegations and deny that Plaintiff is entitled to any recovery on its claims.¹

6. Pursuant to 28 U.S.C. § 1441(a), the State Court Complaint is removable to the United States District Court for the Eastern District of Virginia. This Court has original jurisdiction of this matter under the Copyright Act, 17 U.S.C. § 301(a), which preempts state law claims based on a defendant's access and copying of a plaintiff's computer program or software. *Rosciszewski v. Arete Associates, Inc.*, 1 F.3d 225, 233 (4th Cir. 1993). As set forth in counts two through four of Plaintiff's Complaint, Plaintiff alleges that Defendants violated the Virginia Computer Crimes Act by unlawfully accessing and copying plaintiff's computer software. *See* Compl., ¶¶ 2, 70-71, 76-77, 81. Plaintiff's claims under the Virginia Computer Crimes Act are

¹ *See Key v. DSW Inc.*, 454 F. Supp. 2d 684, 691 (S.D. Ohio 2006) (“[T]he fact that Defendant removed the case does not mean that Defendant concedes that Plaintiff has adequately alleged appropriate damages.”).

thus completely preempted by the Copyright Act. Accordingly, since claims that are preempted by § 301(a) arise under federal law, removal of this action is proper. *Rosciszewski*, 1 F.3d at 233.

7. This Court also has supplemental jurisdiction over plaintiff's remaining state law claim (Count One) under 28 U.S.C. § 1367.

8. Upon information and belief, the attached Complaint is the only pleading filed in the state court to date.

9. All Defendants concur in this removal.

10. Pursuant to 28 U.S.C. § 1446(d), copies of this Notice of Removal will be served upon counsel for Plaintiff, and filed with the Clerk of the Virginia Circuit Court for the County of Arlington.

WHEREFORE, Defendants Symplicity Corporation, Ariel Manuel Friedler, Alok Kumar Dhir, and Matthew Kelley give notice that the above-described action pending against them in the Virginia Circuit Court for the County of Arlington is removed to this Court.

Dated: September 8, 2014

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "David W. O'Brien".

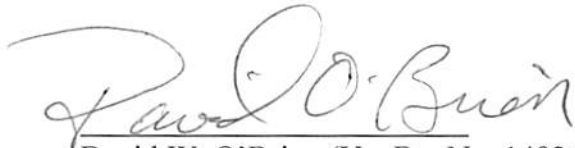
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*Attorneys for Defendants Symplicity
Corporation, Ariel Manuel Friedler, Alok
Kumar Dhir, and Matthew Kelly*

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of September 2014, I caused a copy of the foregoing Notice_of Removal Of Defendants Symplicity Corporation, Ariel Manuel Friedler, Alok Kumar Dhir, and Matthew Kelley, postage prepaid, by first class mail, to the following:

Bernard J. DiMuro, Esq.
Stephen L. Neal, Esq.
Taylor S. Chapman, Esq.
DiMuroGinsberg, PC
1101 King Street, Suite 610
Alexandria, Virginia 22314


David W. O'Brien (Va. Bar No. 14924)